

# **Exhibit 3**

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6 Attorneys for Plaintiff  
7 AXIS HOMEOWNERS ASSOCIATION

8 **SUPERIOR COURT OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10  
11 AXIS HOMEOWNERS ASSOCIATION, a  
California nonprofit mutual benefit corporation,

12 Plaintiff,

13 v.

14  
15 ALMADEN TOWER VENTURE, LLC, a  
California limited liability company; WEBCOR  
CONSTRUCTION LP, DBA WEBCOR  
BUILDERS, a California corporation; and DOES  
1 through 400 inclusive,

16  
17 Defendants.

18 **Case No.: 17CV314037**

19 Assigned for All Purposes to:  
Hon. Thomas E. Kuhnle, Dept 5  
(Complex Civil Litigation)

20 [Complaint filed: December 18, 2017]

21 **SECOND AMENDED COMPLAINT  
FOR:**

- 22 1. **BREACH OF EXPRESS  
WARRANTIES;**
2. **BREACH OF IMPLIED  
WARRANTIES;**
3. **VIOLATION OF STATUTE  
(CIVIL CODE § 896, ET SEQ.);  
AND**
4. **BREACH OF DECLARATION OF  
COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

23 Plaintiff AXIS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit  
24 corporation (hereinafter "Plaintiff" or "Association"), alleges as follows:

25 1. At all times pertinent hereto Plaintiff was and is incorporated as a California nonprofit  
26 mutual benefit corporation established as a common interest development as described in *Civil Code*  
27 sections 4080, 4100, and 5980, with its principle place of business within the County of Santa Clara,  
28 State of California.

1       2. The Association is comprised of owners of condominium units, buildings,  
 2 improvements, structures and other fixtures built and existing upon certain parcels of real property  
 3 all as more particularly described in the Declaration of Covenants and Restrictions Establishing a  
 4 Plan for Condominium Ownership for Axis, recorded with the Santa Clara County Recorder, State  
 5 of California, on December 31, 2007, as Document No. 19698254, and all subsequent amendments  
 6 and corrections thereto, (hereafter "CC&Rs") as follows:

7       All that real property located in the City of San Jose, County of Santa Clara, State of  
 8 California, more particularly described as Parcel A of Tract No. 9802 on that certain  
 Map filed for record on July 7<sup>th</sup>, 2006, in Book 803 of Maps, Pages 21 and 22, in the  
 9 Office of the Recorder of Santa Clara County, California.

10      3. The Association oversees the day to day management, maintenance and operation of  
 11 the Axis common interest condominium development (hereinafter "Condominium Development").

12      4. Plaintiff is informed and believes and based thereon alleges that by the express terms  
 13 of its governing documents as defined by *Civil Code* section 4150, and pursuant to *Civil Code*  
 14 sections 945, 4775, and 5980, and *Code of Civil Procedure* section 382, Plaintiff is granted the  
 15 general authority and responsibility to bring the herein stated claims as a direct action on its own  
 16 behalf and additionally in a representative capacity on behalf of all owners of condominium units  
 17 within the Condominium Development.

18      5. Plaintiff is informed and believes and based thereon alleges that Plaintiff, in  
 19 accordance with its governing documents, has the right and duty to manage, operate, control, repair,  
 20 replace and restore the Condominium Development, including the right to enter into contracts to  
 21 accomplish its duties and obligations, and has all of the powers necessary to carry out its rights and  
 22 obligations, including the right, duty, and power to contract for legal services to prosecute any action  
 23 affecting the Association and/or its membership when such action is deemed by it to be necessary  
 24 to enforce its powers, rights and obligations, or those of its membership, including the bringing of  
 25 this action.

26      6. Plaintiff is informed and believes and based thereon alleges that pursuant to *Code of*  
 27 *Civil Procedure* section 382 and *Civil Code* sections 945, 4775, and 5980, Plaintiff seeks damages  
 28 for defects in the construction and/or development of the Condominium Development which consist

of but are not limited to defects in construction affecting: 1) All real property and/or improvements thereon which are owned by the Association; 2) Association common areas; and 3) Separate interests which the Association is obligated to maintain or repair; and all other components, fixtures, or improvements at the Condominium Development that are within the Associations common and/or general interest, including without limitation separate interest components, fixtures, or improvements therein that may be owned and/or occupied by the Association's membership, but that are within the Association's common and/or general interest and standing within the meaning of *Code of Civil Procedure* section 382, and/or *Civil Code* sections 945, or 5980.

7. Plaintiff is informed and believes and based thereon alleges that, at all times relevant hereto, Defendant ALMADEN TOWER VENTURE, LLC (hereinafter "ALMADEN TOWER VENTURE") was engaged and doing business in the County of Santa Clara, State of California, including but not limited to, development, construction, improvement, marketing and/or sale of mass produced housing generally and *inter alia*, the Condominium Development, specifically.

8. Plaintiff is informed and believes, thereon alleges that, at all times herein mentioned, Defendant WEBCOR CONSTRUCTION LP, DBA WEBCOR BUILDERS (hereinafter "WEBCOR"), a California corporation was engaged and doing business in the County of Santa Clara, State of California including but not limited to development, conversion, supervision, construction and/or improvements of the Condominium Development. Plaintiff is informed and believes and based thereon alleges that WEBCOR is the entity who retained, employed and/or contracted for the services of certain persons or entities to plan, design, provide for labor and materials in the conversion, construction, and/or improvements of the Condominium Development, and as such, WEBCOR was acting in the capacity of General Contractor for the Condominium Development.

9. Plaintiff is informed and believes and based thereon alleges that Defendant DOES 1 through 400, inclusive, whether individual, corporate, associate or otherwise are sued by these fictitious names and whose true names and capacities, at this time, are unknown to Plaintiff. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned each of the Defendants sued herein as DOES 1 through 400 was the agent, servant, and employee of his, her or

1 its co-Defendants, and in doing the things hereinafter mentioned was acting in the scope of his, her  
 2 or its authority as such agent, servant, and employee, and with the permission, consent and/or  
 3 ratification of his, her or its co-Defendants; and that each of said fictitiously named Defendants,  
 4 whether an individual, corporation, association, or otherwise, is in some way liable or responsible  
 5 to the Plaintiff on the facts hereinafter alleged, and caused injuries and damages proximately thereby  
 6 as hereinafter alleged. At such time as Defendants' true names become known to Plaintiff, Plaintiff  
 7 will amend this Complaint to insert said true names and capacities.

8       10. Plaintiff is informed and believes and based thereon alleges that Defendant DOES 1  
 9 through 10, and 350 through 400, inclusive, are, and at all times herein mentioned were, individuals,  
 10 and/or corporations and/or other business entities organized and existing under the laws of the State  
 11 of California, with their principal places of business in the State of California.

12       11. Plaintiff is informed and believes and based thereon alleges that there exists, and at  
 13 all times herein mentioned there existed, a unity of interest and ownership between Defendant  
 14 ALMADEN TOWER VENTURE, and Defendant DOES 1 through 10 and 301 through 400,  
 15 inclusive, such that any individuality and separateness between Defendant ALMADEN TOWER  
 16 VENTURE, and Defendant DOES 1 through 10, and 301 through 400, inclusive have for the  
 17 purposes of the within claims ceased to exist, and Defendant ALMADEN TOWER VENTURE, and  
 18 Defendant DOES 1 through 10, and 301 through 400, inclusive, are, for the purposes of the within  
 19 claims, the alter egos of one another.

20       12. Plaintiff is informed and believes and thereupon alleges that adherence to the fiction  
 21 of the separate existence of the Defendant DOES 1 through 10, and 301 through 400, inclusive, as  
 22 persons or entities distinct from Defendant ALMADEN TOWER VENTURE, or one another, would  
 23 permit an abuse of the corporate privilege and would promote injustice and sanction fraud.

24       13. Plaintiff is informed and believes and based thereupon alleges that Defendant  
 25 ALMADEN TOWER VENTURE and DOES 301 through 350, inclusive, are and at all times herein  
 26 mentioned were, mere shells, shams, or alter egos, without necessary insurance, capital, assets, stock,  
 27 or stockholders, and that Defendant DOES 1 through 10 and 351 through 400, inclusive, conceived,  
 28 intended and used the above-alleged sham entities/structure to avoid individual liability and/or for

1 the purpose of substituting financially inadequate corporations and/or other business entities, or  
2 individuals in the place of Defendant DOES 1 through 10 and 351 through 400, inclusive.

3       14. Plaintiff is informed and believes and based thereupon alleges that at no time after  
4 Defendant ALMADEN TOWER VENTURE, and DOES 301 through 350, inclusive, became  
5 incorporated and/or were established and/or formed, were adequate stock or membership interests  
6 in same authorized to be issued, nor was any permit for issuance of stock or membership interests  
7 applied for with the Commissioner of Corporations, nor were other required corporate or other  
8 formalities followed.

9       15. Plaintiff is informed and believes and based thereupon alleges that Defendant  
10 ALMADEN TOWER VENTURE, and DOES 301 through 350, inclusive, are, and at all times herein  
11 mentioned were, so inadequately insured, capitalized and managed, that, compared with the business  
12 to be done by the Defendant ALMADEN TOWER VENTURE, and Defendant DOES 301 through  
13 350, inclusive, and the risks of loss attendant thereon, such capitalization was illusory.

14       16. Plaintiff is informed and believes and based thereon alleges that Defendant  
15 ALMADEN TOWER VENTURE, and Defendant DOES 301 through 350, inclusive, are, and at all  
16 times herein mentioned were, controlled, dominated, and operated by Defendant DOES 1 through  
17 10 and 351 through 400, inclusive, as their individual businesses and alter egos, in that the activities  
18 and business of Defendant ALMADEN TOWER VENTURE, and Defendant DOES 301 through  
19 350, inclusive, corporations were carried out without the holding of directors' or shareholders'  
20 meetings, without adequate records or minutes of any corporate proceedings, and without necessary  
21 formalities, and furthermore that Defendant ALMADEN TOWER VENTURE, and Defendant  
22 DOES 301 through 350, inclusive, entered into personal transactions with Defendant DOES 1  
23 through 10 and 300 through 350, inclusive, without the approval of other directors or shareholders.

24       17. Plaintiff is informed and believes and based thereon alleges that as a direct and  
25 proximate result of the conduct herein alleged Plaintiff has suffered damages in an amount precisely  
26 unknown, but believed to be within the jurisdiction of this court in that it has been and will hereafter  
27 be required to perform investigations and works of repair, restoration, and construction to the  
28 Condominium Development to prevent further damage and to restore project structures and

improvements to their proper condition and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

18. Plaintiff is informed and believes and based thereon alleges that as a direct and proximate result of the conduct herein alleged there exists a unity of interest and ownership between Defendant ALMADEN TOWER VENTURE, and Defendant DOES 1 through 10 and 301 through 400, inclusive, such that any individuality and separateness between Defendant ALMADEN TOWER VENTURE and Defendant DOES 1 through 10 and 301 through 400, inclusive, have for the purposes of the within claims ceased to exist, and any adherence to the fiction of the separate existence of the Defendant DOES 1 through 10 and 301 through 400, inclusive, as persons or entities distinct from Defendant ALMADEN TOWER VENTURE or one another, would permit an abuse of the corporate privilege and would promote injustice and sanction fraud.

19. Plaintiff is informed and believes and based thereon alleges that Defendant ALMADEN TOWER VENTURE, and Defendant DOES 1 through 10 and 301 through 400, inclusive, are, for the purposes of the within claims, the alter egos of one another and no distinction can equitably be made or separateness or individuality be adjudged to exist between or among them for the purposes of the prosecution of the within claim or entry of any award herein.

I.

## **FIRST CAUSE OF ACTION**

#### **(Breach of Express Warranties)**

[Against Defendant ALMADEN TOWER VENTURE, LLC;  
and DOES 1 to 10, inclusive]

20. Plaintiff realleges and incorporates by reference Paragraphs 1 through 19, inclusive, as though fully set forth again herein.

21. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, expressly warranted through sales brochures of the subject premises, related advertising circulars and materials, the Association's governing documents, contracts of sale, disclosure documents, and related sales warranty information regarding the subject premises, that the Condominium Development and components therein were designed, manufactured and constructed

1 free of defects and in a commercially reasonable manner, fit for their intended residential purposes  
2 when Defendants, and each of them, offered the units of the Condominium Development and  
3 components thereof for sale to the general public for use as residences.

4       22. Plaintiff is informed and believes and based thereon alleges that Plaintiff and its  
5 members relied on Defendants, and each of their express representations that these units and  
6 components therein were designed, manufactured and constructed as warranted, free of defects,  
7 compliant with applicable codes and ordinances, in a commercially reasonable manner, and  
8 reasonably fit for their intended residential purposes.

9       23. Plaintiff is informed and believes and based thereon alleges that Defendants and each  
10 of them, breached these express warranties by manufacturing and/or selling the condominium units  
11 of the Condominium Development with the above-described deficiencies in the design,  
12 specification, planning, supervision, development, improvement, and repair of the Condominium  
13 Development.

14       24. Plaintiff is informed and believes and based thereon alleges that Plaintiff served its  
15 Notice to Builder pursuant to Civil Code section 910, in the within matter, on or about March 8,  
16 2012, and all statutes of limitations and repose have been tolled from that date forward, per  
17 stipulation of the parties. Plaintiff is informed and believes that such date is well within four (4)  
18 years of when Plaintiff knew or in the exercise of reasonable care should have known of the within  
19 alleged misfeasance.

20       25. Plaintiff is informed and believes and based thereon alleges that as a direct and  
21 proximate result of the breach of the express warranties by Defendants, and each of them, as  
22 hereinabove alleged Plaintiff and its members suffered damages stemming from the failure of the  
23 real property and structures thereon, including without limitation, project curtain walls, windows,  
24 doors, parking garage, parking structure, balcony decks, unit interiors, common areas, garage walls,  
25 floors and waterproofing, fire resistive systems, roofs, electrical systems, plumbing systems and  
26 mechanical systems as herein set forth.

27       26. Plaintiff is informed and believes and based thereon alleges that as a direct and  
28 proximate result of the breaches set forth herein, Plaintiff has suffered damages in an amount

precisely unknown, but believed to be within the jurisdiction of this court in that it has been and will hereafter be required to perform investigations and works of repair, restoration, and construction to portions of the structures to prevent further damage and to restore the structures to their proper condition and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

II.

## **SECOND CAUSE OF ACTION**

#### **(Breach of Implied Warranties)**

[Against Defendant ALMADEN TOWER VENTURE, LLC;  
and DOES 1 to 10, inclusive]

27. Plaintiff realleges and incorporates by reference Paragraphs 1 through 26, inclusive, as though fully set forth again herein.

28. Plaintiff is informed and believes and based thereon alleges Defendants that pursuant to controlling California authority, as developers, builders and sellers of the within Condominium Development, and improvements therein, Defendants, and each of them, impliedly warranted that the Condominium Development and components thereof were designed, and constructed in a commercially reasonable, good and workmanlike manner, free of defects and suitable for their intended residential purpose when Defendants, and each of them, offered the Condominium Development and components thereof for sale to the general public for use as residences.

29. Plaintiff is informed and believes and based thereon alleges that Plaintiff and its members relied on Defendants, and each of their implied representations that these units and components therein were designed, manufactured and constructed as impliedly warranted, free of defects and in a commercially reasonable manner, and reasonably fit for their intended residential purposes.

30. Plaintiff is informed and believes and based thereon alleges that notwithstanding the foregoing implied warranties, the Condominium Development and subject structures, components, and improvements therein were not constructed in a commercially reasonable, good and workmanlike manner, free of defects and suitable for their intended residential purpose all as herein

described, but instead, were and are affected by defects in project curtain walls, windows, doors, parking garage, parking structure, balcony decks, unit interiors, common areas, garage walls, floors and waterproofing, fire resistive systems, roofs, electrical systems, plumbing systems, and mechanical systems, as herein set forth.

31. Plaintiff is informed and believes and based thereon alleges that Plaintiff served its Notice to Builder pursuant to Civil Code section 910, in the within matter, on or about March 8, 2012, and all statutes of limitations and repose have been tolled from that date forward, per stipulation of the parties. Plaintiff is informed and believes that such date is well within four (4) years of when Plaintiff knew or in the exercise of reasonable care should have known of the within alleged misfeasance.

32. Plaintiff is informed and believes and based thereon alleges that as a direct and proximate result of the breaches set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this court in that it has been and will hereafter be required to perform investigations and works of repair, restoration, and construction to portions of the structures to prevent further damage and to restore the structures to their proper condition and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

III.

## **THIRD CAUSE OF ACTION**

**(Violation of *Civil Code* Section 896, *et seq.*)**

**[Against all Defendants]**

33. Plaintiff realleges and incorporates by reference Paragraphs 1 through 32, inclusive, as though fully set forth again herein.

34. Plaintiff is informed and believes and based thereon alleges that at the time and place of the within plead development of the Condominium Development by Defendants, there was in effect, California *Civil Code* § 896 which provides as follows:

“In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications,

1 surveying, planning, supervision, testing, or observation of  
2 construction, a builder, and to the extent set forth in Chapter 4  
3 (commencing with Section 910), a general contractor, subcontractor,  
4 material supplier, individual product manufacturer, or design  
5 professional, shall, except as specifically set forth in this title, be liable  
6 for, and the Plaintiff's claims or causes of action shall be limited to  
7 violation of, the following standards, except as specifically set forth  
8 in this title. This title applies to original construction intended to be  
9 sold as an individual dwelling unit. As to condominium conversions,  
10 this title does not apply to or does not supersede any other statutory or  
11 common law.

12 (a) With respect to water issues:

13 (1) A door shall not allow unintended water to pass  
14 beyond, around, or through the door or its designed or actual moisture  
15 barriers, if any.

16 (2) Windows, patio doors, deck doors, and their  
17 systems shall not allow water to pass beyond, around, or through the  
18 window, patio door, or deck door or its designed or actual moisture  
19 barriers, including, without limitation, internal barriers within the  
20 systems themselves. For purposes of this paragraph, "systems"  
21 include, without limitation, windows, window assemblies, framing,  
22 substrate, flashings, and trim, if any.

23 (3) Windows, patio doors, deck doors, and their  
24 systems shall not allow excessive condensation to enter the structure  
25 and cause damage to another component. For purposes of this  
26 paragraph, "systems" include, without limitation, windows, window  
27 assemblies, framing, substrate, flashings, and trim, if any.

28 (4) Roofs, roofing systems, chimney caps, and  
1 ventilation components shall not allow water to enter the structure or  
2 to pass beyond, around, or through the designed or actual moisture  
3 barriers, including, without limitation, internal barriers located within  
4 the systems themselves. For purposes of this paragraph, "systems"  
5 include, without limitation, framing, substrate, and sheathing, if any.

6 (5) Decks, deck systems, balconies, balcony systems,  
7 exterior stairs, and stair systems shall not allow water to pass into the  
8 adjacent structure. For purposes of this paragraph, "systems"  
9 include, without limitation, framing, substrate, flashing, and  
10 sheathing, if any.

11 (6) Decks, deck systems, balconies, balcony systems,  
12 exterior stairs, and stair systems shall not allow unintended water to  
13 pass within the systems themselves and cause damage to the systems.  
14 For purposes of this paragraph, "systems" include, without limitation,  
15 framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Showers, baths, and related waterproofing systems shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) The waterproofing system behind or under ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage. Ceramic tile systems shall be designed and installed so as to deflect intended water to the waterproofing system.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

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(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

(B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility."

35. Plaintiff is informed and believes and based thereon alleges that at the time and place of the within plead development of the Condominium Development, Defendants were in violation of the aforesaid statute in that they, *inter alia*, constructed the Condominium Development with defects/deficiencies and/or violations of the minimum standards of *Civil Code* § 896, including but not limited to the following: the curtain wall system; the parking garage, including walls, floors and structural walls therein; the balcony deck systems; the podium systems; the building base exterior surfaces; common areas and condominium interiors; garage systems, floors and walls, underground garage waterproofing; plaza deck areas and assemblies; fire resistive construction; roofing systems; electrical systems; and plumbing and mechanical systems. The forgoing is an illustrative list, and is not intended to be a complete list of the many breaches of the functionality standards that exist.

36. Plaintiff is informed and believes and based thereon alleges that as a result of the foregoing errors and/or omissions, Plaintiff was damaged and injured in that the pertinent components were and are affected by the foregoing multiple and significant defects, deficiencies, and deviations from the codified requirements, and resultant damages arising therefrom.

37. Plaintiff is informed and believes and based thereon alleges that the above plead provisions of California Civil Code § 896 were designed to prevent the incidence or occurrence of the type of misfeasance and resulting damages and injuries herein alleged to the class of persons herein alleged to have suffered same, in that the foregoing was enacted to provide for minimum standards of construction applicable to residential construction and was intended to prevent the construction and development of substandard, deficient, and/or defective residential construction

1 and resulting damages to the owners thereof and/or the membership of a homeowners association  
 2 created for the management and governance of a residential common interest development such as  
 3 the within Plaintiff Association and its membership.

4 38. In addition, *Civil Code* § 897, provides as follows:

5 “The standards set forth in this chapter are intended to address every  
 6 function or component of a structure. To the extent that a function or  
component of a structure is not addressed by these standards, it shall  
be actionable if it causes damage” (emphasis added).

7  
 8 39. To the extent not encompassed within the foregoing minimum standards provided for  
 9 by *Civil Code* §896, Plaintiff is informed and believes and based thereon alleges that the above-  
 10 plead deficiencies in construction effected by Defendants herein, additionally resulted in actual  
 11 damages to the Plaintiff Association in that it has been and will hereafter be required to perform  
 12 investigations and works of repair, restoration, and construction to portions of the Condominium  
 13 Development to prevent further damage and to restore the structures to their proper and/or bargained  
 14 for condition, and incur related storage and relocation expenses and that any such damages are  
 15 recoverable pursuant to the foregoing provision of *Civil Code* § 897.

16 40. With respect to recoverable damages based on the within plead violations and/or  
 17 deviations, California *Civil Code* § 944 provides that the following are properly recoverable  
 18 damages:

19 “...damages for the reasonable value of repairing any violation of the  
 20 standards set forth in this title, the reasonable cost of repairing any  
 21 damages caused by the repair efforts, the reasonable cost of repairing  
 22 and rectifying any damages resulting from the failure of the home to  
 23 meet the standards, the reasonable cost of removing and replacing any  
 24 improper repair by the builder, reasonable relocation and storage  
 25 expenses, lost business income if the home was used as a principal  
 26 place of a business licensed to be operated from the home, reasonable  
 27 investigative costs for each established violation, and all other costs  
 28 or fees recoverable by contract or statute.”

29  
 30 41. Plaintiff is informed and believes and based thereon alleges that the violation of the  
 31 above-plead provisions of California *Civil Code* §§ 896 and/or 897, directly and proximately caused  
 32 injury and damages to the Plaintiff, in an amount precisely unknown, but believed to be within the  
 33 jurisdiction of this court in that it has been and will hereafter be required to perform investigations

1 and works of repair, restoration, and construction to portions of the Condominium Development to  
2 prevent further damage and to restore the structures to their proper and/or bargained for condition  
3 and/or to ensure compliance with the foregoing minimum standards set forth in California *Civil Code*  
4 § 896, and incur related storage and relocation expenses.

5 42. Plaintiff is informed and believes and based thereon alleges that Plaintiff has properly  
6 notified Defendants, and each of them, of the defective conditions of the subject property, and  
7 notwithstanding such notice, Defendants, and each of them, have failed to acknowledge  
8 responsibility for all of the same or otherwise cause the appropriate restoration and/or repair to be  
9 made to the structures at their cost and expense.

10 43. Plaintiff is informed and believes and based thereon alleges that the items generally  
11 referred to and particularly described herein were latent deficiencies in that the above-described  
12 defects arose out of, were attributable to and are directly and proximately caused by the above-  
13 described latent deficiencies in the design, specifications, planning, supervision, observation of  
14 construction, construction, development and/or improvement of the subject premises and subject  
15 structures, and that prior to the time when such latent defects were discovered by Plaintiff as set  
16 forth herein, could not have been discovered by the exercise of reasonable diligence. Plaintiff, at all  
17 times herein mentioned, relied on the skill of Defendants, and each of them, in producing  
18 condominiums that are compliant with required minimum standards and reasonably fit for their  
19 intended purpose.

20 44. Plaintiff is informed and believes and based thereon alleges that Plaintiff is still not  
21 fully aware of all of the causes, the full extent and possible legal significance of the results or causes  
22 of the property conditions herein above-described due to the loss being continual and latent in nature,  
23 and that further Plaintiff is an organization of lay individuals who have required expert consultations  
24 to provide a review of the property conditions, is still not fully aware of all of the causes, the full  
25 extent, and possible legal significance of these latent deficiencies, nor is Plaintiff fully informed of  
26 the potential causes of the resultant distress due to the loss being continual and latent in nature.

27 45. Plaintiff is informed and believes and based thereon alleges that Defendants, and each  
28 of them, ignored curing the causes of the defects and pursued a course of development and

1 construction of the Condominium Development so as to increase their profit from the project at the  
 2 expense of the ultimate purchaser in that said defects became latent defects, not apparent from a  
 3 casual inspection.

4       46. Plaintiff is informed and believes and based thereon alleges that any and all repair  
 5 attempts by Defendants, and each of them, failed to adequately correct said property damages and  
 6 deficiencies thereby resulting in further damages caused thereby.

7       47. Plaintiff is informed and believes and based thereon alleges that instead of causing  
 8 the necessary and required reconstruction and repair of the Condominium Development, Defendants  
 9 have caused cosmetic, temporary and/or ineffective repairs to be made to various portions of the  
 10 Condominium Development for the purpose of leading Plaintiff and its members to believe that  
 11 Defendants were resolving and correcting all deficiencies and/or, Defendants have represented to  
 12 Plaintiff that such repairs or an offer to make such repairs was and is pending. By virtue of such  
 13 conduct, Defendants are estopped to assert that the Plaintiff has not commenced this action in a  
 14 timely fashion and are further estopped to assert that the Plaintiff may not seek the damages herein  
 15 sought.

16       48. Plaintiff is informed and believes and based thereon alleges that as a direct and  
 17 proximate result of the defects set forth herein, Plaintiff has suffered damages in an amount precisely  
 18 unknown, but believed to be within the jurisdiction of this court in that it has been and will hereafter  
 19 be required to perform works of repair, restoration, and construction to portions of the structures to  
 20 prevent further damages and to restore the structures to their proper condition. Plaintiff will establish  
 21 the precise amount of such damages at trial, according to proof, for the following damages:

22           a. For the costs of correction of the problems, specifically expert investigation,  
 23 redesign and reconstruction of the problems, including but not limited to those set forth  
 24 herein, and for which Plaintiff has suffered and/or will suffer damages in an amount the full  
 25 nature and extent of which shall be ascertained according to proof at trial;

26           b. For out of pocket costs and expenses incurred and for general and  
 27 consequential damages to the real property and structures thereon which are the  
 28 legal/proximate consequence of the problems, including but not limited to those set forth

1 herein, and for which Plaintiff has suffered or will suffer damages in an amount the full  
2 nature and extent of which shall be ascertained according to proof at trial;

3 c. For diminution in value which is the legal/proximate result of the problems,  
4 including but not limited to those specified herein, and for which Plaintiff has suffered  
5 and/or will suffer damages in an amount the full nature and extent of which shall be  
6 ascertained according to proof at trial;

7 d. For lost or diminished rental income which is the legal/proximate  
8 consequence of the problems, including but not limited to those specified herein, for which  
9 Plaintiff has suffered and/or will suffer damages the full nature and extent of which shall  
10 be ascertained according to proof at trial;

11 e. For relocation costs and related costs when repairs are effectuated, which is  
12 the legal/proximate consequence of the problems, including but not limited to those  
13 specified herein, for which Plaintiff has suffered and/or will suffer damages the full nature  
14 and extent of which shall be ascertained according to proof at trial;

15 f. For certain repairs and expert investigation which were completed at  
16 Plaintiff's expense which are the legal/proximate consequence of the problems, including  
17 but not limited to those specified herein, and for which Plaintiff has suffered and/or will  
18 suffer damages the full nature and extent of which shall be ascertained according to proof  
19 at trial.

20 49. Plaintiff is informed and believes and based thereon alleges the Defendants, and each  
21 of them, whether developer, builder, contractor, subcontractor, supplier, material men, architect,  
22 engineer or otherwise, negligently, carelessly, tortiously, and wrongfully failed to use reasonable  
23 care in the analysis, preparation, design, manufacture, construction, material supply, or component  
24 installation, of the Condominium Development and structures thereon, including without limitation,  
25 curtain walls, windows, doors, parking garage, parking structure, balcony decks, unit interiors,  
26 common areas, fire resistive systems, garage walls, floors and waterproofing, roofs, electrical  
27 systems, plumbing systems, and mechanical systems, as herein set forth.

28 50. Plaintiff is informed and believes and based thereon alleges the Defendants, and each

1 of them, whether builder, contractor, subcontractor, supplier, material men, architect, engineer or  
2 otherwise, performed work, labor and/or services for the construction of the Condominium  
3 Development, and each knew or, in the exercise of reasonable care, should have known that if the  
4 Condominium Development was not properly or adequately designed, engineered, supervised,  
5 and/or constructed, that the owners and users would be substantially damaged thereby, and that the  
6 Condominium Development and condominium units, buildings, improvements and structures  
7 therein would be defective resulting in damages to Plaintiff.

8 51. Plaintiff is informed and believes and based thereon alleges that Defendants, and each  
9 of them were under a duty to exercise ordinary care as developers, builders, contractors,  
10 subcontractors, suppliers, material men, architects, engineers, or otherwise to avoid reasonably  
11 foreseeable injury to users and purchasers of the condominium units, buildings, improvements and  
12 structures, and knew or should have foreseen with reasonable certainty that purchasers and/or users  
13 would suffer the damages set forth herein if said Defendants, and each of them, failed to perform  
14 their duty to cause the subject premises and subject structures to be designed, engineered, and  
15 constructed in a proper workmanlike manner and fashion with the exercise of reasonable care.

16 52. Plaintiff is informed and believes and based thereon alleges that in performing the  
17 works of a builder and/or contractor, subcontractor, supplier, material men, architect, engineer or  
18 otherwise, said Defendants, and each of them, failed and neglected to exercise reasonable care in  
19 performing the work, labor and services properly or adequately in that each said Defendant so  
20 negligently, carelessly and in an unworkmanlike manner performed the aforesaid work, labor and/or  
21 services such that the subject premises and subject structures as described herein were designed,  
22 engineered, and/or constructed defectively, improperly, negligently, carelessly and/or in an  
23 unworkmanlike manner.

24 53. Plaintiff is informed and believes and based thereon alleges that as a direct and  
25 proximate result of the conduct described herein, Plaintiff has suffered damages in an amount  
26 precisely unknown, but believed to be within the jurisdiction of this court in that it has been and will  
27 hereafter be required to perform investigations and works of repair, restoration, and construction to  
28 portions of the structures to prevent further damage and to restore the structures to their proper

1 condition and/or will suffer damages in an amount the full nature and extent of which shall be  
 2 ascertained according to proof at trial.

3 **IV.**

4 **FOURTH CAUSE OF ACTION**

5 **(Breach of Declaration of Covenants, Conditions and Restrictions)**

6 **[Against Defendant ALMADEN TOWER VENTURE,  
 7 and DOES 1 through 10, inclusive]**

8 54. Plaintiff realleges and incorporates by reference Paragraphs 1 through 53, inclusive,  
 9 as though fully forth again herein.

10 55. On or about December 31, 2007, Defendants recorded a document entitled  
 11 "Declaration of Covenants and Restrictions Establishing a Plan for Condominium Ownership for  
 12 Axis" with the Santa Clara County Recorder, State of California, as Document No. 19698254. Said  
 13 document, together with all subsequent amendments and corrections thereto, are hereinafter referred  
 14 to as "CC&Rs". A true and correct copy of the CC&Rs is attached hereto as Exhibit "1".

15 56. Plaintiff is informed and believes and based thereon alleges that the CC&Rs include  
 16 provisions that provide for and/or require, among other things, the following:

17 a. The CC&Rs shall be binding on all parties having any right, title, or interest  
 18 in the Condominium Development;

19 b. "Owner," as defined by the CC&Rs, refers to any person(s) or entity(ies)  
 20 who are alone or collectively the record holder of a fee simple title to a condominium unit  
 21 in the Condominium Development including the Defendants; and

22 c. The Association, or any Owner shall have the right to enforce by  
 23 proceedings at law or in equity, all restrictions, conditions, covenants, now or hereafter  
 24 imposed by the provisions of the CC&Rs, amendments thereto, bylaws and/or articles of  
 25 incorporation, including the right to prevent the violation of any such restrictions,  
 26 conditions, or reservations and the right to recover damages for such violations.

27 57. Plaintiff is informed and believes and based thereon alleges, that at the time the  
 28 CC&Rs were recorded, Defendants, and/or each of them, were the "Owners" of all of the units of

1 the Condominium Development.

2       58. Plaintiff is informed and believes and based thereon alleges that the CC&Rs further  
 3 provide that the Association shall maintain and repair various project components including without  
 4 limitation common areas and all structures, land and improvements thereon, including project  
 5 curtain walls, windows, doors, parking garage, parking structure, balcony decks, unit interiors,  
 6 common areas, garage walls, floors and waterproofing, fire resistive systems, roofs, electrical  
 7 systems, plumbing systems, and mechanical systems.

8       59. Plaintiff is informed and believes and based thereon alleges that the CC&Rs provide  
 9 that each owner shall pay assessments to the Association for the purpose of promoting the  
 10 Condominium Development's welfare, operating, improving, and maintaining the Association  
 11 property, and discharging any other Association obligations under the CC&Rs.

12       60. Plaintiff is informed and believes and based thereon alleges that at the time the  
 13 CC&Rs were recorded, Defendants were owners of all of the units of the Condominium  
 14 Development and the only Members thereof, and in addition, at this time, Defendants and/or their  
 15 agents and/or employees constituted and thereby controlled the Association's entire board of  
 16 directors.

17       61. Plaintiff is informed and believes and based thereon alleges that Defendants, and each  
 18 of them, breached the obligations and duties imposed upon them by the CC&Rs, at times pertinent,  
 19 as alleged herein, in that they *inter alia*: failed and/or refused to make necessary repairs to  
 20 Association maintained components or defects discovered therewith; failed to notify the subsequent  
 21 members of the Association of such defective conditions or their failures to remedy same; failed to  
 22 pay for damages they and/or their agents or employees caused to the Condominium Development;  
 23 and failed to initially budget, establish, pay, or collect reserves funds sufficient for the Plaintiff  
 24 Association to discharge its obligations as mandated by the Association CC&Rs, and completed  
 25 and/or represented that they would complete repairs sufficient to address defects affecting the  
 26 Condominium Project while failing to do so.

27       62. Plaintiff is informed and believes and based thereupon alleges that as a direct and  
 28 proximate result of the conduct herein alleged Plaintiff has suffered damages in an amount precisely

1 unknown, but believed to be within the jurisdiction of this court in that it has been and will hereafter  
2 be required to perform investigations and works of repair, restoration, and construction to portions  
3 of the Condominium Development to prevent further damage and to restore the structures and  
4 improvements thereon to their proper condition, and has been underfunded and left with insufficient  
5 reserves to address the defects and deficiencies affecting the construction of the Condominium  
6 Development.

7 63. Plaintiff is entitled to recovery of reasonable attorney's fees pursuant to the  
8 provisions of the CC&Rs, and also pursuant to *Civil Code* § 5975, which provides in pertinent part  
9 as follows:

10 "“(c) In an action to enforce the governing documents, the  
11 prevailing party shall be awarded reasonable attorney's fees and  
costs.” (Emphasis added).

12 **WHEREFORE, Plaintiff prays for an award herein as follows:**

13 1. For general and special damages according to proof at trial;  
14 2. For costs of suit and attorneys' fees incurred by Plaintiff herein; and  
15 3. For such other and further relief as the Court may deem just and proper.

16  
17 Dated: March 14, 2018

18 FENTON GRANT MAYFIELD  
KANEDA & LITT LLP

19 By:  
20  
21 JOHN J. STANDER, ESQ.  
22 Attorneys for Plaintiff,  
AXIS HOMEOWNERS ASSOCIATION



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